



Case Reference: EA-2023-0319
Neutral Citation Number: [2024] UKFTT 88 (GRC)

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard on: 15 January 2023
Heard: on the papers

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY
TRIBUNAL MEMBER DAN PALMER-DUNK
TRIBUNAL MEMBER MIRIAM SCOTT

Between

GARY CARNELL

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is allowed in part.

Substituted Decision Notice:

Organisation: The Chief Constable of Dorset Police

Complainant: Mr Gary Carnell

The Substitute Decision - IC-232514-X0J4

1. For the reasons set out below and in the closed annex to this decision:
 - 1.1. The public authority was not entitled to rely on section 31(1)(a), (b) or (c) of the Freedom of Information Act 2000 to withhold the information in categories 1, 2, 4 and 6, identified in the closed annex to this decision ('the disclosable information').
 - 1.2. The public authority was entitled to rely on section 31(1)(a) to withhold the information in categories 3 and 5, identified in the closed annex to this decision.
2. We agree with and adopt the Commissioner's conclusion that the Police were not entitled to withhold the information identified in the confidential annex to the Commissioner's decision notice.
3. The public authority is required to provide the disclosable information to the complainant within 35 days of the date that the decision is sent to the public authority by the tribunal.
4. Any failure to abide by the terms of the tribunal's substituted decision notice may amount to contempt which may, on application, be certified to the Upper Tribunal

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-232514-X0J4 of 13 June 2023 which held that the Chief Constable of Dorset Police ('the Police') was entitled to rely on s 31(1)(a) (prejudice to the prevention or detection of crime) (b) (the apprehension or prosecution of offenders) and (c) (the administration of justice) of the Freedom of Information Act 2000 (FOIA) to withhold the requested information.
2. There is a closed annex to this decision. If there is no appeal against this decision, a redacted version of the closed annex can be released.

Factual background to the appeal

3. Between Blackwater Junction and Cooper Dean on the A338 average speed cameras are introduced in 2021 to enforce the speed limit, which is 50 mph.
4. In his letter to the Police dated 1 August 2023 containing an earlier, related, request for information the appellant states, 'I'm requesting this particular information because on the 10th of July 2022 I was recorded at travelling at 58 mph between Blackwater and Cooper Dean.' Mr Carnell disputes the accuracy of the cameras. In his request for an internal review of the request in issue in this appeal he states, "I do not believe I was speeding, I am local and well aware of the cameras and have not had a speeding ticket or anything else for over 20 years. However pragmatism has forced me to accept the offence.'

Request and Decision Notice

5. Mr Carnell made a number of multi-part requests for information in August 2022. One part of the request made on 9 August 2022 is the subject of this appeal. In that part Mr Carnell requested the following information in relation to the number of speeding tickets issued by the speed cameras between Blackwater Junction and Cooper Dean on the A338:

“The number of people whose tickets have been overturned, broken down by the reasons for overturning them.”

6. The Police responded to the request on 7 September 2023. They provided the number of tickets issued that had been cancelled (1729) and the reasons for 723 of those cancellations. They withheld the reasons why 1006 speeding tickets had been cancelled under section 31(1)(a) (prevention and detection of crime). They upheld their decision on internal review.
7. During the course of the Commissioner’s investigation the Police relied in addition on sections 31(1) (b) and (c).
8. In a decision notice dated 13 June 2023 the Commissioner held that sections 31(1)(a), (b) and (c) were engaged in relation to some of the information and that the public interest favoured maintaining the exemption.
9. The Commissioner held that section 31 was not engaged in relation to one particular reason for cancellation and the Police were ordered to disclose that material. The reasoning for that conclusion is not set out below.
10. The Commissioner was satisfied that the arguments presented by the Police, which concerned the impact of disclosure on law enforcement and the course of justice, referred to prejudice to the prevention or detection of crime, the apprehension or prosecution of offenders and the administration of justice.
11. The Commissioner noted the Police’s argument that disclosure would give road users intent on speeding or who have been caught speeding with a variety of ways that they may be able to avoid or cancel enforcement measures. Having considered the withheld information the Commissioner was satisfied that there was a causal link between disclosure and the claimed prejudice.
12. The Commissioner was satisfied that most of the speeding ticket cancellation categories would be useful to someone with an interest in replicating the circumstances which led to those cancellations. He was satisfied that this information could assist someone to successfully “game the system”, and avoid prosecution, or other enforcement, for speeding. This could encourage

faster driving, beyond legal maximum speed limits, and it could facilitate the avoidance of legal consequences for speeding.

13. The Commissioner was therefore satisfied that the disclosure of most of the speeding ticket cancellation categories, together with the corresponding number of tickets cancelled, would be likely to be prejudicial to the prevention or detection of crime, the apprehension or prosecution of offenders and the administration of justice. In those cases, as the Commissioner accepted that the outcome of disclosure predicted by Dorset Police would be likely to occur and that, for each group of categories referred to in paragraph 19, the exemptions provided by sections 31(1)(a), (b) and (c) were properly engaged.
14. In relation to the public interest balance the Commissioner placed little weight on the argument that it is not in the public interest to punish innocent people because none of the withheld reasons for cancellation concede that speeding did not take place. Further, the Commissioner understands that the basis for any intended enforcement action or prosecution for speeding will be provided to those concerned, so that they may challenge this at court, if they wish.
15. The Commissioner concluded that it was not in the public interest for people to avoid speed limit enforcement penalties by exploiting loopholes. He stated that genuinely held concerns about the speed limit assigned to a particular road should be addressed with the appropriate local authority responsible for setting the limit.
16. In relation to the public interest, the Commissioner concluded that the public interest in maintaining the exemption outweighed the public interest in disclosure.

Grounds of Appeal

17. The grounds of appeal do not explicitly identify why the Decision Notice was not in accordance with the law, but broadly, it appears to be argued that the Commissioner was wrong to conclude that section 31(1)(a) was engaged and that the Commissioner was wrong to conclude that the public interest favoured withholding the information under section 31(1)(a).
18. The appellant makes the following points:
 - 18.1. The Commissioner was wrong to conclude that it was in the public interest to avoid people exploiting 'loopholes'. In relation to perceived inadequacies or ambiguities, it is not for the Police to decide whether this is a loophole and not the intentions of parliament. In relation to other 'loopholes' such as 'speed guns have to be calibrated at regular intervals and operated in a certain way' these are due process, needed to prevent the maladministration of the law.

- These cases either do not involve a crime or the crime has not been proven.
- 18.2. Secrecy leads to the inequality in the enforcement of the law in such cases. If this information was publicly disclosed, everyone would be able to defend themselves and not only those with the means to employ expensive lawyers.
 - 18.3. The decision notice fails to recognise that the Police are not infallible. Their duty is to carry out the law, using due process, it is not up to them to make the laws or interpret them.

The Commissioner's response

19. The Commissioner submits that the grounds of appeal appear to be directed to the assessment of the balance of public interest. The Commissioner relies on his Decision Notice and draws the tribunal's attention to paragraph 44 in which he maintains that:

“the Commissioner notes that Dorset Police has stated that tickets have been cancelled, rather than overturned. None of the withheld reasons for cancellation concede that speeding did not take place. He therefore disagrees with the complainant that disclosure would aid the course of justice in the way he has described. Further, the Commissioner understands that the basis for any intended enforcement action or prosecution for speeding will be provided to those concerned, so that they may challenge this at court, if they wish. Accordingly, he has placed little weight on the complainant's public interest arguments.”

20. The Commissioner submits that the public interest factors outlined by the appellant are insufficient to outweigh the public interest in maintaining the exemption.
21. The Commissioner submits that the public are not hindered in their ability to challenge the finding that they were speeding as a result of the non-disclosure of the withheld information. Non-disclosure does not undermine the presumption of innocence or the need for the prosecution to provide evidence of the offence. The Commissioner does not see how the prosecution would be required to disclose the withheld information in this case, and the Commissioner disagrees that it is in the public interest for individuals to utilise the withheld information in order to avoid or cancel an enforcement measure given the nature of the reasons for cancellation. The public can challenge such measures through the appropriate channels without reference to the withheld information.

Legal framework

Section 31 – law enforcement

22. Section 31 FOIA provides a qualified exemption subject to the public interest test in respect of information relevant to specific areas of law enforcement:

“S 31 - law enforcement

- (1) Information which is not exempt information by virtue of section 30 [investigations and proceedings conducted by public authorities] is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
- (a) the prevention ... of crime
 - (b) the apprehension or prosecution of offenders
 - (c) the administration of justice”
23. The exemption is prejudice based. ‘Would or would be likely to’ means that the prejudice is more probable than not or that there is a real and significant risk of prejudice. The public authority must show that there is some causative link between the potential disclosure and the prejudice and that the prejudice is real, actual or of substance. The harm must relate to the interests protected by the exemption.

The Task of the Tribunal

24. The tribunal’s remit is governed by section 58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner’s decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Issues

25. The issues we have to determine are as follows:
26. If the disputed information, or any part of it, were released, would it prejudice, or be likely to prejudice:
- 26.1. The prevention of crime?
 - 26.2. The apprehension or prosecution of offenders?
 - 26.3. The administration of justice?
27. If so, does the public interest in maintaining the exemption outweigh the public interest in disclosing it?

Evidence

28. We had before us a closed and an open bundle of documents. The closed bundle contained the withheld information and an unredacted version of the confidential annex to the Decision Notice.

Discussion and conclusions

Section 31(1)(a): If the disputed information were released, would it prejudice, or be likely to prejudice the relevant matters?

29. There is an overlap under this exemption between whether or not the section is engaged and any subsequent application of the public interest test, because the prevention of crime is in the public interest. Some of our reasoning in this section also supports our conclusions on the public interest balance below.
30. The applicable interests in this case are the prevention of crime, the apprehension or prosecution of offenders and the administration of justice. Section 31(1) is engaged where there would or would be likely to be prejudice to the prevention of crime, the apprehension or prosecution of offenders or the administration of justice. These sections do not require the Police to show that disclosure would or would be likely to lead to any increase in crime.
31. The nature of the prejudice being claimed by the Police is that:
- 31.1. The information would provide very useful information to individuals looking to avoid having to pay fines or going to court for speeding offences. It could be used to avoid the consequences of speeding. Any information that could be used to the advantage of an offender would adversely affect public safety and have a negative impact on the prevention or detection of crime.
 - 31.2. Release of the information would hinder the Police's ability to prevent and detect criminal behaviour. The safety of the public is of paramount importance to the policing purpose, and an increase in speeding would place the public at risk.
 - 31.3. The information could be exploited by individuals who are intent on, and indeed do, speed, which would additionally put members of the public at risk.
32. When deciding if the section is engaged, we must decide if the Police have satisfied the evidential burden of showing that some causal relationship exists between the prejudice being claimed and the potential disclosure; if the prejudice is real, actual or substantial; and whether the chance of prejudice is more than a hypothetical or remote possibility i.e. is there a real and significant risk of prejudice?
33. We are satisfied that the claimed prejudice is real, actual and of substance, and that it relates to the interests protected by the subsections relied upon.

34. We have considered the causative link in relation to each reason, or group of similar reasons separately. Necessarily some of this reasoning must be contained in the closed annex at present, otherwise it would defeat the purpose of the appeal. If there is no appeal against this decision, once the time limit for appealing the decision has expired, most of the closed annex can be released.
35. We have divided the reasons into 6 categories, which are identified in the closed annex. There is additional reasoning in relation to each category in the closed annex.
36. Category 1 encompasses two related reasons. They are both withheld under section 31(1)(b) and (c). The police argue that public knowledge of these reasons would mean that people would take certain actions, after having received a speeding ticket, to try to avoid enforcement measures.
37. We are not satisfied that there is a causative link between disclosure of the reasons in category 1 and the claimed prejudice for the reasons set out in the closed annex. We conclude that the exemption is not engaged in relation to category 1.
38. Category 2 covers one reason withheld under section 31(1)(b) and (c). The Police have not explained to us the mechanism by which prejudice would be likely to occur as a result of the release of this information. We are not persuaded that there is a causative link between disclosure of this information and the claimed prejudice. We conclude that the exemption is not engaged in relation to category 2.
39. Category 3 encompasses two related reasons withheld under section 31(1)(a) and (b). We accept that there is an obvious and common-sense causative link between the disclosure of this information and certain drivers feeling that they would not be likely to face enforcement measures if they exceeded the speed limit. We accept, again as a matter of common sense, that this would be likely to increase the number of drivers exceeding the speed limit. As a result we accept that this would be likely to cause prejudice to the prevention of crime under section 31(1)(a) and we conclude that the exemption is engaged.
40. Category 4 covers one reason withheld under section 31(1)(b) and (c). Our conclusions on this category are similar to those under category 2, in that we are not persuaded that there is a causative link based on the information before us, because the Police have not adequately explained the mechanism by which the claimed prejudice could be caused by disclosure of this information. The exemption is therefore not engaged in relation to this information.
41. Category 5 covers one reason withheld under section 31(1)(a) and (b). In our view the Police have provided a logical explanation of why release of this

information would be likely to cause the claimed prejudice. We accept that if drivers were aware that the Police might cancel tickets in these circumstances, there is a real significant risk that, as a result, some drivers might speed in circumstances where they might otherwise not have done. We accept that this would be likely to increase the number of drivers exceeding the speed limit. In our view this would be likely to cause the identified prejudice and section 31(1)(a) is engaged.

42. Category 6 covers one reason withheld under section 31(1)(a), (b) and (c). In our view releasing the information that some tickets have been cancelled because of this particular reason does not release any new information into the public domain. We are not satisfied that releasing this information would be likely to cause the claimed prejudice. Road users with the intention of speeding are already well aware of this tactic from information in the public domain, including on this Police Force's website. We find that the exemption is not engaged.

Public interest balance – categories 3 and 5

Public interest in withholding the information

43. In relation to both these categories we have accepted that there is a real and significant risk that release of the information would be likely to increase the number of drivers exceeding the speed limit and prejudice the prevention of crime. There is a strong in-built interest in avoiding prejudice to the prevention of crime. There is an extremely strong public interest in avoiding any increase in individuals driving above the speed limit, because it carries a risk of physical harm to other road users.

Public interest in disclosure

44. Neither of these reasons relate to individuals who have been erroneously accused of offences. The reasons do not provide information to individuals which they could usefully use to defend themselves when wrongly accused of speeding. The public interest arguments in relation to ensuring that innocent individuals are not punished do not apply. Nor do these reasons fall into the category of a failure by the Police to follow due process.
45. In relation to category 5 it is clear that it was not parliament's intention to absolve people in these circumstances of liability for speeding offences. That particular public interest does not apply.
46. In relation to category 3, we accept that there is some public interest in the public being aware of the approach of the Police to this, because it might enable them to raise a legitimate request for the Police to consider cancelling a ticket. However, the law on this issue is already publicly available (in statute

and case law), including details of the factors that would have to be considered before an offence fell in this category. I accept that these are not very accessible to a lay person, but the release of the information does not assist with this difficulty. Simply knowing that the Police might cancel a ticket when it falls into this category does not give any indication of the many factors that are considered before that decision is taken. The information that would be released is therefore of very limited practical assistance for someone seeking to challenge a ticket on this basis.

47. We accept that there is a general public interest in accountability and transparency in relation to the reasons why the Police cancel speeding tickets.

Conclusions on the public interest

48. Overall we conclude that the public interest in withholding the information is extremely strong and it outweighs the public interest in disclosure.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 26 January 2024

Promulgation Date: 30 January 2024